

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA,) CASE NO. 4:20-CR-269-Y
Government,)
VERSUS) FORT WORTH, TEXAS
ERIC PRESCOTT KAY,)
Defendant.) OCTOBER 11, 2022
2:03 P.M.

VOLUME 1 OF 1
TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE TERRY R. MEANS
UNITED STATES DISTRICT COURT JUDGE

A P P E A R A N C E S :

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P R O C E E D I N G S

October 11, 2022 - 2:03 p.m.

(Various participants wearing masks)

COURT SECURITY OFFICER: All rise.

(Judge enters)

COURT SECURITY OFFICER: Hear ye, hear ye, hear ye,
the United States District Court for the Northern District of
Texas at Fort Worth is now in session, the Honorable Terry R.
Means presiding.

Let us pray. God bless these United States and this
Honorable Court. Amen.

THE COURT: Let's be seated.

Next before the Court is the sentencing of Eric
Prescott Kay, Case Number 4:20-CR-269-Y.

Are the parties ready to proceed?

MS. MARTIN: Yes, Your Honor. Errin Martin, Joseph
Lo Galbo, and Jonathan Bradshaw for the government, and we're
ready to proceed.

MR. COFER: Cody Cofer here for Mr. Kay, and I'm
ready.

THE COURT: Thank you, sir.

Mr. Kay, please acknowledge your presence in court
for the record by stating your full name.

THE DEFENDANT: Yes, Your Honor. Eric Prescott Kay.

THE COURT: Thank you, sir.

1 If you and your counsel will please step to the
2 lectern.

3 Mr. Kay, you appeared before the Court on
4 February 17, 2022, at which time a jury found you guilty on
5 Count 1 of the superseding indictment charging you in Count 1
6 with conspiracy to possess with intent to distribute a
7 controlled substance, in violation of 21 United States Code
8 Section 846 and 21 United States Code Sections 841(a)(1) and
9 (b)(1)(C); and in Count 2 with distribution of a controlled
10 substance resulting in death and serious bodily injury, in
11 violation of 21 United States Code Sections 841(a)(1) and
12 (b)(1)(C).

13 Mr. Cofer, did you and your client receive in a
14 timely manner a copy of the presentence investigation report
15 and the addendum to the report?

16 MR. COFER: Your Honor, I appeared in the case after
17 the due date for the presentence report, but I was provided
18 the presentence report immediately upon appearance in the
19 case, and I received the addendum.

20 THE COURT: And you had an opportunity, I take it,
21 to review it carefully with Mr. Kay?

22 MR. COFER: Yes, Your Honor.

23 THE COURT: Did the government receive those timely?

24 MS. MARTIN: Yes, Your Honor.

25 THE COURT: Then I'll now notify the parties of my

1 tentative findings as to the government's objections to the
2 presentence report, and the disposition of the defendant's
3 motion for downward variance.

4 The government's first two objections are moot,
5 having been accepted by the probation officer in her addendum
6 to the presentence report.

7 The government's third objection is sustained.

8 Its fourth objection is overruled for the reasons
9 set out in the addendum.

10 The fifth objection is moot, having been accepted by
11 the probation officer in her addendum to the presentence
12 report.

13 The government's sixth objection is overruled for
14 the reasons set out in the addendum.

15 The defendant's motion for downward variance should
16 be denied for the reasons set out in and in response to the
17 facts alleged in the government's sentencing memorandum.

18 Does the government have any objection or evidence
19 relating to the Court's tentative findings?

20 *MS. MARTIN:* No, Your Honor.

21 *THE COURT:* Does the defendant?

22 *MR. COFER:* Just argument, Your Honor.

23 *THE COURT:* Go ahead.

24 *MR. COFER:* So, as it relates to the motion for
25 downward variance, and the Court indicated that it should be

1 denied based on, at least in part, what was contained in the
2 government's sentencing memorandum.

3 In the pleadings of the government, they have chosen
4 to paint Mr. Kay as a very villainous character. I believe
5 the letters and the information at trial don't support that
6 image of Mr. Kay.

7 As the letters indicate, there are a lot of people
8 that loved him, that he made happy, that he made their lives
9 much better, and, of course, the Court knows he doesn't have
10 any criminal history. He has a long work record.

11 Mr. Kay was someone that had the courage to follow a
12 dream. His job, in many ways, was a dream job, working from
13 being an intern and then working his way up in the
14 organization.

15 And you think about him being there in the Angels
16 organization, much of his life is orbiting these stars. In
17 his own way, he was providing a great deal of happiness and
18 love and support, not only for the athletes he was working
19 with, but all the people in the organization, but I think some
20 of the letters give us some insight into the power dynamic
21 that Mr. Kay was working in.

22 We punish more harshly those that deal drugs than
23 those that just use drugs. There are a variety of reasons we
24 do that. One is because dealing drugs often is predatory in
25 nature. You are taking advantage of someone's weakness so

1 that you can benefit from it, make money. That's just not the
2 reality of Mr. Kay's relationship with these athletes and the
3 other people in the organization.

4 There's a tremendous amount of pressure, and,
5 really, your survival in the organization depends on your
6 ability to keep these stars happy. And, it's not just that.
7 Mr. Kay put himself in a position where he's surrounded by
8 people, in many ways, he viewed as heroes.

9 You know, if he could be out there playing, he
10 would. Like most of us, he had a dream as a little kid of
11 being a professional baseball player, but he found a way to be
12 close to it, and he loved a lot of the people that he worked
13 with, and, so, it's just not the typical drug dealer/addict
14 situation.

15 Now, something else that's very telling and
16 undermines the credibility of the government's position. In
17 their exhibits, they let the Court know about the plea
18 negotiations in this case, and somehow the government thought
19 that a possible sentence of 5 years, 60 months, was possibly
20 the just sentence in this case.

21 Now that they have had to go through all the trouble
22 of the trial -- and, frankly, probably the insults of
23 listening to his jail phone calls -- and the media spotlight
24 on the case, all of a sudden, the just result exceeds 20
25 years.

1 As for the phone calls, I expect the government may
2 play some of those, and I would absolutely hate if the phone
3 calls, my private phone calls following a trial, were played
4 for the Court. I've never said anything that I wouldn't want
5 you to hear, Your Honor, but I'm sure that there's been some
6 U.S. Attorneys that I've said some very nasty things about,
7 and I didn't go to prison.

8 So, I feel confident the Court can view those calls
9 and those communications in the appropriate context and
10 realize that they are not really a view into Mr. Kay, his
11 decisional process in leading up to trial, or his character,
12 but the words of someone that is facing a 20-year sentence in
13 a tremendous amount of pain.

14 And the people that he relied upon -- Mr. Molfetta
15 particularly -- to be there and give him good counsel -- I'm
16 not -- it's not before the Court, I think, to decide whether
17 his agency was overcome or anything like that, but, in many
18 ways, it seems to me he was abandoned for ego, and I can
19 understand how that results in some resentment, some anger
20 that comes out in phone calls after the fact.

21 So, Your Honor, for the reasons stated in my motion
22 for downward variance, and, really, I think said better in the
23 many letters provided to the Court, a sentence at the
24 statutory minimum of 20 years on Count 2, and then a downward
25 variance on Count 1, of course, running the two counts

1 together, would be the appropriate sentence.

2 *THE COURT:* All right, sir. Thank you.

3 *MR. COFER:* And Your Honor, if I -- I know you'll
4 take it up. I do have one person to address the Court for
5 sentencing.

6 *THE COURT:* Okay. First of all, let me note that
7 any objections that have been made to the tentative findings
8 of the Court are overruled.

9 I adopt as my final findings of fact the statements
10 of fact made in the presentence report, subject to and
11 including changes and qualifications made by the addendum.
12 The defendant's motion for sentencing variance is finally
13 denied.

14 I've received numerous letters on behalf of Mr. Kay,
15 and I've been through those carefully in preparation for this
16 hearing.

17 In addition to that, you've made remarks that are in
18 the nature of final remarks. You made those in response to
19 the question about a downward variance.

20 Have I given you sufficient time to make all the
21 remarks you wanted to make on behalf of Mr. Kay?

22 *MR. COFER:* Assuming the government doesn't have
23 evidence -- I've been provided exhibits, and I know that the
24 reporter was given the name of some witnesses, so --

25 *THE COURT:* Let's find out about that before you

1 have to go forward.

2 Does the government wish to present anything to the
3 Court?

4 *MS. MARTIN:* Your Honor, only in the way of
5 argument, but as part of that argument, I intend to quote some
6 of the things Mr. Kay has said.

7 *THE COURT:* Okay. I'm going to give you the last
8 word on that, if you've just got argument.

9 *MS. MARTIN:* Yes, and the witnesses are victims, so
10 they will be giving a -- reading a letter to the Court as far
11 as their victim impact.

12 *THE COURT:* Okay. So, let me go back to Mr. Cofer.
13 Do you have anything that you want to say on
14 Mr. Kay's behalf before I ask Mr. Kay if he wants to speak?

15 *MR. COFER:* I would just like the Court to hear from
16 his son.

17 *THE COURT:* All right. Go ahead. You may be
18 seated.

19 I have just been handed a note here to remind me
20 that this -- I inadvertently skipped over one important part
21 of the Court's findings.

22 The total offense level is 38; the Criminal History
23 Category is I; the imprisonment range as to Count 1 is 235 to
24 240 months; as to Count 2, 240 to 294 months; supervised
25 release range in Counts 1 and 2 is 3 years to run

1 concurrently; and a fine range of 50,000 to \$1 million; plus
2 the costs of imprisonment and supervision.

3 I don't think there's any question but that that's
4 the correct calculation.

5 Correct, counsel?

6 *PROBATION:* Your Honor?

7 *THE COURT:* I'm sorry.

8 *(At the bench, off the record, with probation)*

9 *THE COURT:* Yeah. The total on Count 2 should be
10 240 to 293, not 294.

11 Other than that, Mr. Cofer, do you have any
12 objection to the Court's determination of the guideline range?

13 *MR. COFER:* No, Your Honor.

14 *MS. MARTIN:* No, Your Honor.

15 *THE COURT:* Okay. Thank you.

16 Now, hello, sir. How are you?

17 *MR. CARTER KAY:* Good afternoon, Your Honor.

18 *THE COURT:* Good afternoon, sir.

19 *MR. CARTER KAY:* I would just like to take this time
20 to say a few words about my father.

21 *THE COURT:* All right.

22 *MR. CARTER KAY:* First off --

23 *THE COURT:* You're the oldest boy?

24 *MR. CARTER KAY:* I'm the middle child. I have an
25 older brother and a younger brother.

1 THE COURT: Okay.

2 MR. CARTER KAY: Growing up, it was tough. Due to
3 his job, he was traveling a lot, so the times I did have with
4 him were very near and dear to me.

5 As a boy, he really did try his best to spoil us
6 with things since he was not there, but the thing I wanted to
7 thank him most for was teaching me the game of baseball, due
8 to it being integrated into my life today as the coach I am.

9 Lots of memories due to his job, such as spring
10 training, where he would bring lots of my family and friends
11 onto the field to meet the players. Being able to be in that
12 atmosphere is something not a lot of children get the
13 opportunity for. I was very thankful for things such as that.

14 He was always kind to the people he was around. I
15 mean, he would go out on a whim and get a whole family tickets
16 last minute, if they needed them, for very little time needed.

17 Sorry, Your Honor, I'm just very nervous.

18 THE COURT: You're doing fine. Go ahead.

19 MR. CARTER KAY: But most of all, being able to turn
20 to him at tough times growing up. Where if I had trouble with
21 friends or, say, girlfriends, I would come to my father for
22 wisdom. Or such as a deal like this, where it's so negative
23 on all aspects, he actually taught me to turn negative things
24 into positive, and that's kind of where I get that from him.

25 Like, I'm not a very emotional person. I don't tend

1 to cry much, but he has taught me to stay strong and stay
2 tough through times like this, and that is what I am most
3 grateful for him for.

4 But most of all, I just -- my little brother needs
5 him most.

6 *THE COURT:* He's 11 now?

7 *MR. CARTER KAY:* He is 12.

8 *THE COURT:* 12 now?

9 *MR. CARTER KAY:* 12, yeah. It's just -- it's tough
10 because I haven't seen him smile in a while. I try to get him
11 to smile, but he -- that was -- that was his job. It's just
12 tough trying to step up, but my point is my father is a good
13 man, a good human being. He wouldn't -- wouldn't do something
14 bad willingly.

15 So, that's all I have to say, Your Honor.

16 *THE COURT:* Thank you, sir.

17 *MR. CARTER KAY:* Thank you.

18 *THE DEFENDANT:* I'm going to start on -- I
19 can't -- sorry, Your Honor. (sobbing)

20 *MR. COFER:* Would you like to hear from Mr. Kay now,
21 Your Honor?

22 *THE COURT:* Yes. Mr. Kay, go ahead. And if you're
23 going to read something, just go slow enough that we can hear
24 you and take it down by the court reporter.

25 *THE DEFENDANT:* Yes, Your Honor.

1 I'm sorry. I really didn't want to write anything
2 down, but there's no way that I would stay to task, as you can
3 see, so --

4 *THE COURT:* Can you pull that microphone closer?

5 *THE DEFENDANT:* Thank you for allowing me to talk,
6 Your Honor.

7 I want to initially apologize to my family for the
8 disgrace and embarrassment I have brought to our last name. I
9 never meant to tarnish, and this is on a national level, and I
10 know that, and I'm so sorry.

11 I will spend the rest of my days in repair of
12 the -- I'm sorry -- my addiction took me to some dark places
13 and the wreckage that I left in my wake is something that I
14 will spend the rest of my days in repair of, particularly my
15 three sons, Tanner, Carter, and Hudson.

16 Carter, I'm so proud of you. Thank you, buddy.

17 I would be remiss if I didn't acknowledge my mom and
18 my sister for showing me the true meaning of unconditional
19 love. You guys are my beacons of light. You guys are my
20 pillars and I know it.

21 Also, Cody, thank you for taking over at a
22 precarious time. I understand that you got thrown in, too,
23 and I'm so thankful.

24 Your Honor, after the trial, I did indeed vent my
25 frustrations. I spewed vitriol through phone calls and

1 e-mails. I was incarcerated. I was in Fort Worth, Texas,
2 with nobody and nothing. I isolated myself. I was
3 self-containing and I understand that. I was selfish.

4 And then it hit me. It's not about me. This is not
5 about me. We're all here because somebody lost their life,
6 and that was Tyler Skaggs.

7 Tyler Skaggs was a sweetheart of a man. Tyler
8 Skaggs was so special. He was so kind to me. In the
9 business, Your Honor, there are go-to people that just get it
10 and they understand my plight, a person like me, an underling,
11 and Tyler was always willing and able to do whatever I asked
12 in a professional capacity. Yes, we had our own darkness to
13 deal with, if you will, but as far as a pro, Tyler was an
14 absolute pro and a better person.

15 *THE COURT:* Let me stop you there because you
16 said -- you're now saying that it was because you were upset
17 and lashing out because of what had happened.

18 You said: I hope people realize what a piece of
19 you-know-what Skaggs is. Well, he's dead, so F him. That's
20 how I feel about it.

21 *THE DEFENDANT:* That's disgusting, and I hate it,
22 and I -- I don't even know why I said that. I was -- I was
23 mad at the world. I would have said anything.

24 *THE COURT:* To whom did you say it?

25 *THE DEFENDANT:* I think that was to my mom, and she

1 probably said something like, you can't say that, I don't
2 know, but I remember being in prison and saying that, and I
3 wanted to blame Tyler for all of this, and that's so wrong and
4 foul, and what I said right there, Your Honor, is disgusting
5 and I regret it. I'm not trying to make excuses. I'm just
6 trying to --

7 *THE COURT:* That's enough of an explanation.

8 *THE DEFENDANT:* -- where my head space was.

9 *THE COURT:* I don't want to derail what you want to
10 say.

11 *THE DEFENDANT:* No, I acknowledge that.

12 I don't even want to begin to try to understand the
13 pain this family has endured. I can't. I could not imagine
14 it. If I lost that young man right there, I don't know that I
15 could make it, so I will just respectfully acknowledge their
16 profound loss.

17 Although I disagree with several aspects presented
18 during the trial, I'm here to receive a sentence for which I
19 was found guilty. I understand that.

20 My hope is to return to my three sons ASAP and help
21 guide them through this life as a sober, healthier man, Your
22 Honor. Thank you for the time. I appreciate it.

23 *THE COURT:* Okay. Thank you.

24 Does the government wish to be heard?

25 *MS. MARTIN:* Yes, Your Honor. Would you prefer to

1 hear the victim impact statements at this time?

2 *THE COURT:* Now is the time to hear them.

3 Mr. Kay, you may return to your seat.

4 *MS. MARTIN:* First, Your Honor, Debbie Skaggs, Tyler
5 Skaggs's mother.

6 *THE COURT:* Okay. Good afternoon.

7 *MS. DEBBIE SKAGGS:* Thank you for hearing me today,
8 Judge. I'm a little emotional after hearing all that, as you
9 can --

10 For almost 28 years, I had the privilege of being
11 Tyler's mom. My happiest memories are marked by Tyler's
12 presence: The day of his birth, watching him play baseball,
13 the day he was drafted, and seeing him marry Carli. You don't
14 truly realize how much you take for granted until your world
15 crumbles like mine did on July 1st, 2019.

16 My only child is gone. Tyler's death brought an
17 emptiness that will haunt me every day for the rest of my
18 life. I can't begin to describe the pain his absence brings.
19 I should be watching my son live out his dream. I should have
20 the gift of seeing my child hold his own child for the first
21 time. Instead, I've spent the last three years reliving a
22 parent's worst nightmare.

23 Tyler had his entire life ahead of him. At the time
24 of his death, he was the best pitcher on the Angels, and he
25 was a year and a half away from becoming a free agent. He was

1 excited about starting a family. He loved his life. In
2 Tyler's job, he dealt with pressure and pain, but he would
3 never knowingly take a pill laced with fentanyl.

4 Since Tyler's death, I often wake in the middle of
5 the night feeling sadness and anger. Until you've buried a
6 child, you won't understand how hard every holiday, every
7 birthday, every death day, or simply any normal day is without
8 them.

9 My grief will forever be submitted to a specific
10 date and time. It's a reference point to when the clock
11 stopped, to when my life changed forever. Every memory is now
12 defined by before or after July 1st.

13 I find happiness in the messages I consistently
14 receive from people about the impression Tyler left because of
15 his big heart. My son was the embodiment of what is right in
16 this world. He had the rare gift of bringing out the best in
17 others. When he would talk to you, you had his complete and
18 total attention. It was like you were the only person in the
19 room. He impacted so many people in such a positive way. His
20 kindness and love will never be forgotten. I'm so proud to be
21 Tyler's mom.

22 I walk this life a little bit differently. Tyler
23 has become my light, my guide. I embrace and cherish the
24 little reminders of my sweet son all around me every day, but
25 I will always mourn the loss of my only child. I'm left to

1 wonder who Tyler would be today, a young man who was on the
2 brink of an amazing life, and his family, and his career.

3 No parent should ever receive a call like the one I
4 did on the morning of July 2nd. Eric Kay knew that the drugs
5 he was distributing to my son and other players was laced with
6 fentanyl. A strict sentence for this defendant has the power
7 to dissuade people from providing lethal drugs to others.

8 This sentence will not bring my son back, but it is
9 my hope that it will keep the defendant and others from
10 providing deadly pills to another person, someone's son or
11 daughter. Again, thank you.

12 *THE COURT:* Thank you.

13 *MS. MARTIN:* Your Honor, now Felicia Skaggs. This
14 is Tyler Skaggs's aunt, his dad's sister.

15 *THE COURT:* All right. Thank you.

16 Good afternoon.

17 *MS. FELICIA SKAGGS:* Good afternoon, Your Honor.

18 *THE COURT:* Go ahead.

19 *MS. FELICIA SKAGGS:* I need to put my glasses on.

20 I'm here today for my brother, Darrell Skaggs,
21 Tyler's father, who moved in with me shortly after Tyler's
22 death. I've been taking care of him for the last three years.

23 My brother wrote a statement that I'm going to read,
24 so these are his words:

25 I would like to start off by saying thank you to all

1 parties involved in the prosecution of Eric Kay.

2 Unfortunately, due to severe health reasons, I am unable to be
3 here. I never thought I would be writing a letter like this.

4 *THE COURT:* Go slower.

5 *MS. FELICIA SKAGGS:* Sorry.

6 There aren't enough words to express how Tyler's
7 passing has affected myself, my family, and my friends. Tyler
8 was my everything. Tyler was my only child. We talked or
9 text each other nearly every day.

10 Tyler was a great son, a good, kind, and caring
11 young man. Tyler loved life, never took for granted the
12 skills that God gave him. Tyler gave back to the community,
13 both at home and when he was on the road. He visited
14 hospitals and children to give some hope and joy to others.

15 Tyler loved working with kids. When he would come
16 visit me, he made sure he went to my batting cages to see the
17 kids and sign autographs. He would give pitching lessons and
18 hitting tips to all the kids there.

19 The day I received the call from Tyler's mother that
20 Tyler was dead, time stopped. My life would change forever.
21 What I heard her say, our son is dead, Tyler is dead, those
22 words haunt me every day. To this day, I still don't remember
23 how I got to Texas to see my son for the last time.

24 I have been battling depression since that day.
25 There were and are still days I just can't get out of bed or

1 get moving. I had a small baseball training facility with
2 batting cages and pitching mounds. I lost interest in going
3 to work, so subsequently sales dropped and I had to let the
4 business go. I've sought help from counseling and my church,
5 but nothing has helped. They say time heals all wounds. I
6 don't think they ever lost their only child.

7 So many lives have been turned upside down. I'm not
8 sure what the future will bring, but I do know that all the
9 plans I had with my son will never happen. The hurt and
10 feeling of hopelessness I don't think will ever go away.
11 There is a part of me that says, eye for an eye, put Eric Kay
12 away for life.

13 I don't know what the right sentence is. I just
14 know I will never see or talk to my son again. Our plans for
15 holidays or to go camping, fishing, hunting, traveling are
16 gone. My chance for grandchildren are gone. I will have the
17 anxiety and nightmares the rest of my life.

18 I know that no matter how much time Eric Kay gets,
19 it won't bring back Tyler, but the longer he is incarcerated,
20 the safer everyone else is, so I ask the Court to sentence him
21 to the maximum amount.

22 Thank you. Darrell Skaggs.

23 *THE COURT:* Thank you.

24 *MS. MARTIN:* Your Honor, finally, we have Carli
25 Skaggs, Tyler Skaggs's widow.

1 THE COURT: Good afternoon.

2 MS. CARLI SKAGGS: Good afternoon, Your Honor.

3 I fell in love with Tyler in 2013 and spent the six
4 best years of my life with him by my side. He was my best
5 friend and my protector. He was home.

6 On June 30th, 2019, before Ty boarded the plane to
7 Texas, we kissed and said, I love you. We never parted
8 without those exchanges, so it wasn't anything out of the
9 ordinary. I had no idea those would be our last words spoken,
10 our last embrace, our last kiss. I intended to spend the rest
11 of my life with Tyler. Instead, I hold on to the fact that I
12 had a love most people never get to experience.

13 Ty was the most loving and genuine person. He had a
14 spirit that brightened every room he walked into. He had an
15 incredible work ethic and drive, with dreams of becoming an
16 all-star pitcher and world series champion. He spent every
17 waking moment honing his craft and had a promising career. He
18 never took his job or skills for granted, and I loved watching
19 him do what he loved. Everyone who met Tyler adored him, and
20 it made me proud to be his wife.

21 On July 1st, 2019, my life changed forever. I will
22 always be haunted by the phone call I received and the memory
23 of seeing Tyler's lifeless body on a gurney, kissing his cold
24 lips. No one should ever have to experience those things,
25 especially at such a young age and after only having been

1 married for seven months.

2 We didn't make it to our one-year anniversary.
3 Instead, I planned a wedding and a funeral within a year's
4 time. Unimaginable happiness followed by unimaginable pain.
5 In a single moment, I was robbed of my future.

6 We never went to bed without saying, I love you, and
7 always held hands while driving in the car. For months after
8 his passing, I would put my hand on the center console to
9 reach for his hand while driving. It was second nature to me
10 and a startling reminder that he was gone.

11 Grieving publicly has been extremely difficult. I'm
12 a private person and the details of the most tragic event in
13 my life have been shared in the press, written about, and
14 commented on by people who didn't know anything about Tyler.
15 So many falsehoods were told, but, because of the trial, I
16 didn't have the ability to speak up for Tyler or myself.

17 I lived with so much fear and uncertainty,
18 particularly leading up to the trial, that I developed serious
19 social anxiety. During the past two and a half years, my
20 first thought every morning has been about this trial. I
21 couldn't properly grieve Tyler because there were so many
22 added layers because of the circumstances surrounding his
23 death.

24 It wasn't just Tyler's life that ended that day.
25 The person I was left with him. I look at pictures of myself

1 from before Tyler's death and do not recognize who I am
2 looking at. I no longer care to celebrate birthdays or
3 holidays. I feel guilty laughing. I don't interact much in
4 social settings. I don't want anyone who I don't know to ask
5 about my life, if I'm married, or if I have kids.

6 The old me was so happy and outgoing and I loved to
7 be around people. I fear I'll never have that again. Not
8 only am I grieving the loss of my husband, but I am grieving
9 the loss of myself.

10 Not long before he passed, Tyler and I talked about
11 having children. He would have made the best father. Shortly
12 before our wedding, we bought a house that would be our family
13 home, but we didn't get the chance to live in it, and I will
14 never live in it -- live there by myself.

15 My father was diagnosed with dementia shortly before
16 Tyler died. To my father, Tyler was a second son. Tyler
17 showed more patience with my dad than anyone else in the
18 family. He loved to take care of him.

19 I always feared loss, but knew that, with Tyler by
20 my side, I would be able to get through the hardship of
21 watching both my grandma and my father decline. It devastates
22 me to know that they may never see me as a mom, and they may
23 never see me truly happy again. This weighs heavily on me.
24 I'm scared to love again and now scared to have children one
25 day because I fear I will lose them.

1 Since Tyler's passing, my two closest friends
2 purchased homes and had their first children, milestones that
3 we were supposed to experience and celebrate together. They
4 are experiences I was robbed of and fear may never happen for
5 me. I love being part of their lives, but I am constantly
6 reminded of what I will never get to have with Tyler.

7 The life I knew was over. I live with regrets
8 because I wasn't there to save him, but he should not have
9 needed saving. I feel strongly that those who risk the lives
10 of others with killer drugs need to be held accountable.

11 If anything good can come of Tyler's death and this
12 trial, it will be preventing someone else's wife from
13 receiving the call I did on July 1st.

14 Thank you, Your Honor.

15 *THE COURT:* Thank you.

16 *MS. MARTIN:* Your Honor, may I?

17 *THE COURT:* You may.

18 *MS. MARTIN:* Your Honor, at this time I would move
19 to admit Exhibit 1. It contains calls and e-mails that I
20 intend to reference during my argument.

21 *THE COURT:* All right.

22 *MS. MARTIN:* And I will only play about one minute
23 of one call.

24 *THE COURT:* All right. Admitted.

25 *MS. MARTIN:* Your Honor, at this time I would like

1 to argue about the 3553(a) factors that the Court considers in
2 determining a sentence, the appropriate sentence for Eric Kay.
3 I would specifically like to focus on the nature and
4 circumstance of the -- circumstances of the offense, and the
5 history and characteristics of the defendant, and the need for
6 the sentence imposed to reflect the seriousness of the
7 offense, to promote respect for the law, and to provide just
8 punishment for the offense, and to protect the public from
9 further crimes of the defendant.

10 The nature of this offense: Your Honor, in
11 considering the nature of this offense, I do think it's
12 important to know who Tyler Skaggs was, and you've heard from
13 his family members. He was a standout athlete and a
14 professional pitcher.

15 I've been investigating and preparing for this
16 trial, and we interviewed a number of professional athletes
17 that played with Tyler, and the things they said about him
18 were not about his talent. They were that he was outgoing,
19 that he was warm, that he was the person that planned the
20 Texas two step dress-up.

21 Several of them commented that pitchers and position
22 players kind of were in their own groups. They self-select
23 and hang out with people that play the same position, but
24 Tyler was the bridge. Tyler was nice to everyone and tried to
25 get everyone involved.

1 And I think for a mother, for Tyler's mother, maybe
2 the things she would be most proud of that people said,
3 without exception, was that Tyler was kind to everyone.

4 But as a result of Eric Kay's actions, Tyler Skaggs,
5 a son, a husband, a nephew, a friend, a young man with a
6 bright future, died in a hotel room in Southlake, Texas, from
7 terminal gastric aspiration. He suffocated on the contents of
8 his own stomach because of an overdose of fentanyl, and it was
9 fentanyl carried from California to Texas by Eric Kay.

10 He overdosed in a hotel room that was less than a
11 quarter of a mile from the Southlake Police Department and
12 Fire Department where an EMS team would have been. A quarter
13 of a mile. They carried life-saving Narcan, and Eric Kay was
14 in the room.

15 Only Eric Kay knows whether he knew Tyler was in
16 distress and he freaked out and decided to save his own skin
17 and his own job and just waited it out until he thought it was
18 free and clear to leave, or whether he was so high himself
19 that he didn't care that Tyler was in distress because we know
20 that talk timeline.

21 We know that Tyler texted Eric Kay his room number
22 and come by at 11:47 p.m., and that Eric Kay responded K at
23 11:50 p.m. And 12:02 a.m., 12 minutes after Eric Kay
24 responded, Tyler Skaggs, who had been rapidly on his phone
25 texting with his wife and another player named Ty Buttrey,

1 sent the last text of his life.

2 And we know that Eric Kay didn't access his room
3 until 8:25 the next morning, and he did it with a key he had
4 to retrieve from the front desk. He had to walk by Tyler
5 Skaggs's lifeless body, grab the wrong key, and then go get a
6 new one, and then he went back to his room, and then later he
7 went and had barbecue with Tom Taylor. That was the nature
8 and circumstances of Count 2.

9 For Count 1, it was years of distribution for
10 players for the Angels, and if he wasn't around because he was
11 in rehab, they weren't getting it anywhere else. He was their
12 source.

13 And Eric Kay gave those players pills, despite the
14 fact he knew they were likely or potentially counterfeit and
15 could contain fentanyl. We see that he knows it in those
16 OfferUp messages when he's specifically asking if they contain
17 fentanyl. He did that before his rehab and before Tyler
18 Skaggs's death.

19 In fact, he left rehab in the late spring of 2019,
20 and on the very first road trip after he was out of rehab, he
21 traveled with the Angels from Anaheim, the Angel Stadium, to
22 Southlake, and provided that poison to Tyler Skaggs, and then
23 he lied and deflected and blamed. That's the nature and
24 circumstances of the crimes.

25 History and characteristics of the defendant: I

1 know the Court has read many letters from friends and family
2 and have heard from a member of Mr. Kay's family here today,
3 and it's really sad, upsetting, and in all of these cases,
4 it's often the family of the convicted defendant that suffers
5 far more than the defendant, and that is unfortunate, but Eric
6 Kay wasn't thinking about that when he was committing the
7 acts, and Eric Kay took the hope and promise of ever having
8 children away from Tyler and Carli Skaggs.

9 This Court has also heard a great deal today and in
10 those letters about what a good guy Eric Kay was. With the
11 exception of probably those very closest to him, it's unlikely
12 that those people, in those many letters, know the real Eric
13 Kay or fully know the real Eric Kay. The real Eric Kay is
14 incapable of taking responsibility for his own actions and
15 likely has been for his entire life.

16 And what about Eric Kay's life? His background is
17 not the typical drug defendant that this Court sees. Eric Kay
18 grew up upper middle class in California. He went to
19 Pepperdine University. He brags about how well Pepperdine
20 prepared him for this day on his jail calls.

21 Eric Kay started working with the Angels, as
22 Mr. Cofer said, when he was still in college, and he moved up
23 through the ranks. A good job. A six-figure income. A dream
24 job for a baseball lover, near his hometown, and near his
25 family, and a family that was present.

1 Eric Kay wasn't born on the streets. He wasn't born
2 into poverty. He wasn't born with two strikes against him
3 like so many people that this Court sees. But Eric Kay and
4 his family and friends ask this Court to feel sorry for him,
5 to try to convince this Court that he is the unfortunate
6 result of an unfair environment, these players. That's
7 nonsense. Eric Kay is not a victim.

8 Eric Kay had chances, so many chances, so many
9 opportunities, but he chose to distribute illicit drugs.
10 Whatever his motivation, acceptance by professional athletes,
11 to pay for his own habit, or because it was expected, it
12 doesn't matter. He had opportunities, he had chances, he had
13 choices, and he chose to distribute these substances in spite
14 of the risks, and he chose to bring them to the Northern
15 District of Texas and take them to room 469 and give them to
16 Tyler Skaggs, and it resulted in Tyler Skaggs's death.

17 And if those aren't reasons enough to sentence Eric
18 Kay to the high end of the guidelines, Your Honor, we have
19 phone calls and e-mails between Eric Kay and his family and a
20 few friends to reveal who Eric Kay really is, not this sad
21 person you should feel sorry for in those letters.

22 We can't imagine why he said the things he said. He
23 said he realizes now that those were the wrong things to say
24 and they were horrible. I suspect he realized that once the
25 government filed pleadings that contained them.

1 That's -- those words, those are the real Eric Kay.
2 The vitriol on his calls and e-mails, not just once or twice,
3 call after call after call, for the entire time those calls
4 were retrieved, ending in the end of July.

5 The vitriol for the government -- which is to be
6 expected and is of no consequence -- for the victim, Tyler
7 Skaggs, for his mother, for his widow, and for the jury that
8 was seated in this case, that shows who Eric Kay really is,
9 and all of those conversations and messages over months
10 demonstrate that he had absolutely no remorse. In fact, it's
11 everyone else's fault but his.

12 In one of the calls -- or excuse me, in one of the
13 e-mails to his mother, Eric Kay says: I was telling -- his
14 sister -- if we want to get info out via the media, you can
15 always tell them to use sources and they will. You can always
16 deny anything came from you. We need to take a shot at that
17 expletive fed with the horrible makeup, or even the trash
18 expletive Skaggs family, if they keep up their expletive.

19 And in fact, in another e-mail from Ms. Kay to Eric
20 on May 4th, 2022, she states that she mailed a copy of her
21 letter, a mother's rage, to a reporter that has covered this
22 case extensively, and a California attorney that represents a
23 third-party with an interest in this case.

24 He insults the jury repeatedly. In a phone call in
25 April, Eric Kay says, most of the jurors were unemployed by

1 the looks of them. In an e-mail to a friend, Eric Kay writes:
2 I can't wait to get my story, otherwise known as the truth,
3 out there. The false narrative by the feds is just evil and
4 people bought it. Oh, and if a jury of my peers is fat,
5 sloppy, toothless, and unemployed, well, then I'm the Easter
6 Bunny.

7 In a phone call in April, Eric Kay states: They are
8 expletive with the wrong educated expletives because everyone
9 in that courtroom that found me guilty, they probably can't
10 put two numbers together, and that's what pissed me off.

11 In February, Eric states on a call: Being in Texas
12 and looking at that jury, as soon as the jury was named.

13 In another call, Eric Kay refers to the jury as
14 rednecks, and uneducated, and makes a personal, hateful attack
15 on a specific juror.

16 In an April phone call with a friend, Eric Kay says:
17 A jury of my peers? Half these expletive didn't have teeth.
18 I mean, it was bad. It was nine girls, nine girls. So, as
19 soon as Skaggs's mom goes up, and the wife, it's over for me.

20 And on July 30th, from the very end of the calls
21 that were pulled, Eric Kay is still referring to the expletive
22 idiot jurors.

23 Family insults: About Tyler Skaggs's widow, Eric
24 Kay says, in February: You get to see, with her taking the
25 stand, how dumb she is, and she's got a nice lisp, too.

1 In another phone call, Eric Kay says of Tyler
2 Skaggs's family: They are white trash, 100 percent. All
3 they -- Tyler Skaggs's family -- see are dollar signs. They
4 may get more money with him dead than he was playing because
5 he sucked.

6 And finally, the insults on the victim himself. In
7 a March phone call, Eric Kay says: There's so much sympathy
8 for this guy, who lived a reckless life, and then wants to
9 blame other people. It's disgusting.

10 In multiple calls, Eric Kay calls Tyler Skaggs
11 reckless -- not wonderful, not awesome, reckless.

12 And he's -- and he says: He thought he was a
13 superstar, but look at his stats. It tells you what he was.

14 In another call, Eric Kay states that: To be in
15 jail for Tyler Skaggs's transgression is an absolute joke.

16 Your Honor, Eric Kay does not care that a young man
17 is dead at his hands. He cares about Eric Kay, and that kind
18 of person reoffends. That kind of person has no respect for
19 the law.

20 And, of course, that was demonstrated again in
21 August of this year, as the Court knows, when Eric Kay had
22 been in custody for months, when he was found with Suboxone,
23 which contains an opioid, secreted away in an address book
24 under his bed, for which he did not have a prescription.

25 And he was having his sister put money on the books

1 of other inmates.

2 Eric Kay isn't going to stop. He's never going to
3 be worried that he will do it to someone else, and he will
4 continue with his pattern. He did it in 2019 as soon as he
5 got out of rehab, then traveled to Texas and this happened.
6 He's going to do it again. He's doing it in jail. He does
7 not care. He will just find someone else to blame.

8 Your Honor, none of this is demonstrated any more
9 than in the conversation Eric Kay had with his mother, and
10 it's a conversation you referenced earlier.

11 He and his mother, Sandra Kay, are talking about
12 Tyler Skaggs's family, his mother, Debbie Hetman, who was a
13 teacher and softball coach for decades, and, ultimately, Tyler
14 Skaggs himself.

15 At this time I would like to play a portion of that.
16 It's in Exhibit 1-J on the government's exhibit, and it starts
17 at minute 11.

18 (Exhibit 1 excerpt played for the Court)

19 *MS. MARTIN:* Your Honor, you could hear it in Eric
20 Kay's voice. He doesn't care.

21 Based on this and the 3553(a) factors, the
22 government asks for a sentence at the high end of the
23 guidelines.

24 *THE COURT:* All right. Thank you.

25 *MR. COFER:* Your Honor, the government having

1 admitted evidence and the victim impact statements, may I
2 respond with a few words?

3 *THE COURT:* You may.

4 *MR. COFER:* I trust that the Court could read the
5 exhibits attached to the government's pleadings, and, of
6 course, able to listen to the disk, if provided in advance,
7 but I understand that's less sensational.

8 It doesn't change the fact, and, of course, it hurts
9 to hear, and it's awful to hear, awful to read the things that
10 were said in those phone calls in making sense of what's
11 happened. You know, no way other than 20 years, the minimum
12 being 20 years, no way to make that make sense for Eric or for
13 his family, and you can hear the anger and the resentment, and
14 I don't think it's something that -- I mean, there will be
15 days where he feels anger and resentment probably for quite
16 some time.

17 And it's not as though you go one day fighting the
18 case and, because of the jury's verdict, then it's like,
19 okay, well, now I'm resigned and perfectly fine with being
20 away from my children for 20 years. That's just not the way
21 it works.

22 The mention of Tyler Skaggs's life being an
23 important 3553(a) factor, I don't think the government is
24 suggesting that one life is worth more than the other, and one
25 death is worth a more severe punishment than the other,

1 perhaps, I don't know, but comparing the lives of Eric Kay and
2 Tyler Skaggs, there's no making the ledger right. A sentence
3 isn't going to make the ledger right.

4 I don't know how many times I've stood here and the
5 government has minimized poverty, people living on the
6 streets. Truth is it's just -- it's tough all over.
7 Addiction doesn't just stay on the east side of Fort Worth.
8 It goes into the clubhouses of professional baseball. It goes
9 into universities.

10 I feel confident that the Court is able to process
11 the many emotional components of the case, and I don't want to
12 belabor it. I'm trying to be judicious in my argument because
13 I do believe Mr. Skaggs's family deserves respect, and I'm not
14 here -- I don't want anything that I say to be taken as
15 diminishing their suffering or attempting to diminish the
16 value of Tyler Skaggs's life.

17 So, I'll end with this. Eric Kay is going to be, in
18 20 years, 68, and he had no criminal history before this. The
19 notion that he is likely to reoffend is just not supported by
20 reason. And the notion that 20 years is not sufficient, if
21 any sentence can, to address the 3553(a) factors, I mean,
22 there's just not any support for that idea.

23 So, Your Honor, I would ask that the Court impose a
24 240-month sentence, and I know that that's not going to make
25 Tyler Skaggs's family feel any better, and it's certainly not

1 going to make it any easier on Eric's family's life, but I do
2 think the questions the Court has to answer with regard to
3 sentencing, it is a sufficient sentence.

4 *THE COURT:* Thank you, sir.

5 Mr. Kay, if you'll step to the lectern, along with
6 your counsel.

7 *THE DEFENDANT:* Sure.

8 *THE COURT:* I'll now state the sentence determined
9 after consideration of all the factors set out in Title 18
10 United States Code Section 3553(a), including especially the
11 advisory sentencing guidelines issued by the sentencing
12 commission and the conduct found by the jury at trial. The
13 attorneys will have a final chance to make legal objections
14 before sentence is finally imposed.

15 It is the judgment of the Court that the defendant,
16 Eric Prescott Kay, in Case Number 4:20-CR-269-Y, be committed
17 to the custody of the Federal Bureau of Prisons for a period
18 of 235 months on Count 1, and 264 months on Count 2, to run
19 concurrently with Count 1, for an aggregate sentence of 264
20 months.

21 I recommend that he be incarcerated in California,
22 in the State of California.

23 The Court does not order a fine or costs of
24 incarceration because Mr. Kay does not have the financial
25 resources or future earning capacity to pay a fine or costs of

1 incarceration.

2 Restitution is not ordered because there is no
3 victim other than society at large.

4 Other than -- pardon me. It is ordered that upon
5 release from imprisonment, Mr. Kay shall be on supervised
6 release for a term of 3 years on Count 1, and 3 years on Count
7 2, to run concurrently.

8 While on supervised release, he shall comply with
9 the standard conditions recommended by the United States
10 Sentencing Commission at Section 5D1.3(c) of the United States
11 Sentencing Commission Guidelines Manual, and comply with
12 certain other conditions that have been set out in a separate
13 order, signed by me this day, and offered to Mr. Kay for his
14 review and signature.

15 He has now returned that order to the Court, with
16 his signature, indicating his receipt of those other
17 conditions, his understanding of them, his waiver of having
18 them read here in open court, and his agreement to be bound by
19 them and subject to revocation for any violation of them.

20 In addition, he is ordered to pay a mandatory
21 special assessment of \$200, \$100 per count.

22 A sentence of 235 months as to Count 1, and 264
23 months as to Count 2, for an aggregate sentence of 264 months,
24 is sufficient, but not greater than necessary, to comply with
25 the purposes set forth in paragraph 2 of Section 3553(a), that

1 is, reflect the seriousness of and provide just punishment for
2 the offense, promote respect for the law, afford adequate
3 deterrence to criminal conduct, and protect the public from
4 further crimes of the defendant.

5 Mr. Kay, I've been dreading this day since the first
6 day you were before me because I always felt like a 20-year
7 mandatory minimum sentence imposed by Congress was excessive.

8 As you see, I have gone actually above that by two
9 years, 24 months, because, while I accept the notion that
10 having been caught saying these things about the jurors, the
11 counsel, the defendant, the defendant's family, it is somewhat
12 understandable because you said it under duress and in anger.
13 It lasted a long time.

14 I seem to have fared pretty well so far, but if you
15 haven't changed your ways, I suspect I'll be the recipient of
16 some of that vitriol as well, but that's of no import.

17 The important thing is what I see coming from your
18 mouth from the date of your conviction, at least through the
19 end of July, was not just vitriol, but a callousness and a
20 refusal to accept responsibility and even be remorseful for
21 something that you caused.

22 Now, Tyler Skaggs was not a perfect person, and he
23 was a drug user, too, and he facilitated this, too, but he
24 paid the ultimate price for that, and now I have you in front
25 of me trying to forge and come up with an appropriate

1 sentence.

2 God only knows if the 264 months is an appropriate
3 sentence. That's a long time. And I don't think the upper
4 end of the guidelines, 293 months, is rational either, but the
5 people's representatives, acting through Congress, decided
6 that a 20-year sentence should be the minimum sentence where
7 someone distributes drugs and thereby causes the death of
8 someone. That's out of my hands. That's what the people's
9 representatives have decided is an appropriate sentence.

10 I've added two more years to that in response to
11 your seeming lack of remorse. It may very well be that you
12 now have that remorse. Giving you the benefit of the doubt on
13 that is why I have not gone above the 264 months.

14 All of that is not to say that I don't have sympathy
15 for, or that the Court doesn't, or that the people of the
16 United States don't have sympathy for your situation,
17 especially for your family and your three sons.

18 That's the reasoning of the Court, the decision of
19 the Court.

20 Is there any reason why the sentence should not be
21 imposed as stated?

22 *MS. MARTIN:* No reason from the government, Your
23 Honor.

24 *MR. COFER:* Your Honor, I object to the substantive
25 reasonableness of the sentence for the reasons stated in the

1 motion for downward variance and contained in the presentence
2 report, and also the concerns and views the Court has
3 expressed about the statutory minimum and how the Court is
4 obliged to, of course, sentence within that range, but then
5 add to it. I think making that the basis of the sentence
6 creates a substantially unreasonable sentence.

7 *THE COURT:* Okay. Thank you, sir.

8 Objection is overruled. Sentence is imposed as
9 stated.

10 *MR. COFER:* Your Honor, I would ask, because I don't
11 think I would have an opportunity otherwise. There, in the
12 record, was the evidence of a plea agreement for 60 to 120
13 months, and I wonder if the Court would have accepted that
14 plea agreement.

15 There's obvious reasons that I'm asking and --

16 *THE COURT:* Well, tell me the reason you're asking.

17 *MS. MARTIN:* Your Honor, I think this goes to a
18 potential 2255 in the future. I assume that's where we're
19 going here.

20 *MR. COFER:* Well, I just think in evaluating the
21 outcome of the case in later proceedings that it might be a
22 valuable bit of insight.

23 *THE COURT:* I think the only thing appropriate for
24 me to say is it's a rare occasion that I don't accept plea
25 agreements.

1 MR. COFER: Thank you, Your Honor.

2 THE COURT: But I have rejected some.

3 MR. COFER: None of mine, but --

4 THE COURT: No, none of yours.

5 MR. COFER: Thank you.

6 THE COURT: Mr. Kay, if you decide to appeal on any
7 ground, you do have the right to apply for leave to appeal in
8 forma pauperis, and you do have that right to appeal.

9 I have in front of me an instrument that you have
10 returned to me. It's a Notice of Right to Appeal Sentence
11 that you have signed and returned to the Court. Please
12 understand that this right of appeal is not -- the purpose of
13 this instrument here is to notify that you have the right to
14 appeal. It is not your notice to the Court that you are, in
15 fact, appealing.

16 And if you decide to appeal, you must do so within
17 14 days, in writing, filed with the court, and Mr. Cofer will
18 assist you in that if you ask him to.

19 Do you have any questions, sir?

20 THE DEFENDANT: No, Your Honor.

21 THE COURT: You're remanded to the custody of the
22 United States Marshal.

23 *(Bench Conference with Courtroom Deputy)*

24 THE COURT: Do we have dismissal of counts?

25 MS. MARTIN: No, Your Honor. Thank you.

1 THE COURT: The original indictment?

2 MR. COFER: It's a superseding.

3 MS. MARTIN: Yes. At this time, Your Honor, the
4 government would move to dismiss the original indictment.

5 THE COURT: Okay. Granted.

6 We'll be in recess until further call.

7 COURT SECURITY OFFICER: All rise.

8 THE COURT: Go ahead. I've got some paperwork here.
9 Go ahead.

10 (End of Proceedings)

11 **REPORTER'S CERTIFICATE**

12 I, Debra G. Saenz, CSR, RMR, CRR, certify that the
13 foregoing is a true and correct transcript from the record
14 of proceedings in the foregoing entitled matter.

15 Further, due to the COVID-19 pandemic, various
16 participants wore masks or were heard via videoconference,
17 so proceedings were transcribed to the best of my ability.

18 I further certify that the transcript fees format
19 comply with those prescribed by the Court and the Judicial
20 Conference of the United States.

21 Signed this 13th day of March, 2023.

22 /s/ Debra G. Saenz
23 DEBRA G. SAENZ, CSR, RMR, CRR
24 Texas CSR No. 3158
25 Official Court Reporter
 The Northern District of Texas
 Fort Worth Division

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